IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.4 OF 2005

IN

WRIT PETITION NO.133 OF 2004

1.Mr.Abdul Wahid s/o. Abdul Samed and another. ...Petitioners.

VS.

1.State of Maharashtra & ors. ...Respondents

Mr.S.K.Chaurasia i/b. A.M.Saraogi, for Petitioners.

Ms.P.G.Bhatia, for Respondent nos.2 to 5.

CORAM: D.K.DESHMUKH, J.

DATED: 29TH JANUARY,2007.

P.C.:

1. This contempt petition is liable to be dismissed because this has been filed in a most casual manner. In fact filing of this petition in such a manner amounts to abuse of the process of the Court. This petition has been filed alleging willful breach of the order passed in Writ petition no.133 of 2004 on 13.2.2004 by this Court, by respondent nos.2 to 4 in their capacity as partners of respondent no.5 and/or as legal representatives of the proprietor of

respondent no.5. The order that is made by the Division Bench reads as under-

> "(b) Respondent no.3 is directed to refund the amount of consideration received from the petitioners with interest at the rate of 18% p.a. from the date of payment till the amount is refunded within three months from today."

The order passed by the Division Bench quoted above operates against the respondent no.3 in the Writ Petition. The respondent no.3 in the Writ Petition is added thus:-

> "M/s.Mangal Corporation, a firm having its office at Mangal Nagar, Yari Road, Versova, Andheri (W), Mumbai 400061"

In paragraph (1) of the Writ Petition it is stated that"Respondent no.3 are the Builders in respect of the building where the Petitioners are having their flats in question."

2. In the order dated 13.2.2004 it is observed

thus:-

> "Since the said Shri.H.P.Gupta died, a fresh notice was issued in the name of Vishal Gupta son of the deceased H.P.Gupta for the said unauthorised construction on the said stilt portion of building."

So, from the order it appears that respondent no.3 was a proprietorship concern of which Mr.H.P.Gupta was the proprietor and that proprietor has died even before the petition was filed. The Division Bench's order does not say that Vishal Gupta then become the sole owner of the proprietorship concern. In the contempt petition, however, it is stated thus:-

> "Respondent nos.2 and 3 are Son and Mother whereas Respondent no.4 is the sister of the Respondent no.2 and are presently partners of the firm of Respondent no.5 hereinabove. Respondent nos.2 to 4 are also heirs and legal representatives of late Shri.Hariprakash Gupta who had been originally carrying on business in the firm name and style of

Respondent no.5 hereinabove."

The petitioners have annexed at "Exhibit B" a memorandum of understanding wherein Mr.Vishal Hariprasad Gupta the respondent no.2 herein described himself as a sole proprietor of the firm M/s.Mangal Corporation. Same is the case of memorandum of understanding at "Exhibit C". One does not find any explanation given in the entire body of the petition as to why if in the memorandum of understanding the respondent no.2 is shown as a sole proprietor of M/s.Mangal Corporation, the respondent nos.3 and 4 have been joined as respondents and the allegation is made against them that they have willfully disobeyed the order made by this Court. Thus, not only, the petition has been filed unnecessarily joining the respondent nos. 2 and 3 as respondents in the petition but also even show cause notice is issued to them for showing cause as to why contempt proceedings should not be initiated against them. What is pertinent to note is that though in the memorandum annexed to the petition it is stated that the respondent no.2 is carrying on business in the name of M/s.Mangal Corporation, it is nowhere alleged that the respondent no.2 was a party to the writ petition and that order is binding on him. If one goes by the

averments made in paragraph (1) of the Contempt petition, it appears that the respondent no.2 is made liable either as a partner of the firm or as a legal representative of Mr.H.P.Gupta, as if the order in the writ petition was made against Mr.H.P.Gupta. If the order in the writ petition is made against the Mr.H.P.Gupta, all his legal representatives should have been brought on record of the writ petition, because it is an admitted position on the date on which the order was made by the Division Bench that Mr.H.P.Gupta was no more. In the petition nowhere an allegation is made that the respondent no.2 was liable to abide by the order passed by this Court because he was carrying on business in the name of the firm and he was solely liable. It is thus, clear that the petition has been filed in most casual manner. The petition is therefore, disposed of.

3. However, for filing such a petition and getting the show cause notice issued against the persons who do not appear to be liable, in my opinion, costs are liable to be imposed on the petitioners. The petitioners are directed to pay Rs.15,000/- as and by way of costs of this petition to the respondent no.4.